

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

|                                  |   |                           |
|----------------------------------|---|---------------------------|
| <b>UNITED STATES OF AMERICA,</b> | ) | <b>CASE NO. 8:05CR191</b> |
|                                  | ) |                           |
| <b>Plaintiff,</b>                | ) |                           |
|                                  | ) |                           |
| <b>vs.</b>                       | ) | <b>ORDER</b>              |
|                                  | ) |                           |
| <b>KEVIN J. YALE,</b>            | ) |                           |
|                                  | ) |                           |
| <b>Defendant.</b>                | ) |                           |

This matter is before the Court on the Defendant's successive motion under 28 U.S.C. § 2255, alternatively considered as a motion under 28 U.S.C. § 2241 (Filing No. 92).

Rule 9 of the Rules Governing Section 2255 Proceedings provides: "Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion, as required by 28 U.S.C. § 2255, para. 8." The Defendant's successive § 2255 motion is denied for lack of an order from the Eighth Circuit allowing this Court to consider the motion.

The Court notes that the Defendant sought to characterize his motion as one filed under 28 U.S.C. § 2241. The Court disagrees with this characterization due to the issues raised. However, even assuming the § 2241 characterization is correct this Court lacks jurisdiction to consider the § 2241 motion. A § 2241 motion must be filed in the district of incarceration, the District of Columbia, or the district where the Bureau of Prisons regional office is located. *United States v. Feist*, 346 Fed. App'x 127, at \*\*1 (8<sup>th</sup> Cir. 2009) (citing *United States v. Chappel*, 208 F.3d 1069, 1069-70 (8<sup>th</sup> Cir. 2000)). Nebraska is not included among the potential districts.

IT IS ORDERED:

1. The Defendant's successive motion under 28 U.S.C. § 2255, alternatively considered as a motion under 28 U.S.C. § 2241 (Filing No. 92) is denied; and
2. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 6<sup>th</sup> day of December, 2011.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge